

4187. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; The Cessna Aircraft Company Models 525, 525A, and 525B Airplanes [Docket No. FAA-2005-21109; Directorate Identifier 2005-CE-21-AD; Amendment 39-14232; AD 2005-17-11] (RIN: 2120-AA64) received September 12, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4188. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; McDonnell Douglas DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, and MD-10-30F Airplanes; and Model MD-11 and MD-11F Airplanes [Docket No. FAA-2005-20662; Directorate Identifier 2004-NM-191-AD; Amendment 39-14225; AD 2005-17-04] (RIN: 2120-AA64) received September 12, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4189. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Boeing Model 777-200 and -300 Series Airplanes [Docket No. FAA-2005-20350; Directorate Identifier 2004-NM-202-AD; Amendment 39-14223; AD 2005-17-02] (RIN: 2120-AA64) received September 12, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4190. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Bombardier Model CL-600-2B19 (Regional Jet Series 100 & 440) Airplanes [Docket No. FAA-2005-20353; Directorate Identifier 2004-NM-255-AD; Amendment 39-14224; AD 2005-17-03] (RIN: 2120-AA64) received September 12, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4191. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Tiger Aircraft LLC Models AA-5, AA-5A, AA-5B, and AG-5B Airplanes [Docket No. FAA-2005-20968; Directorate Identifier 94-CE-15-AD; Amendment 39-14222; AD 95-19-15 R1] (RIN: 2120-AA64) received September 12, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4192. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Short Brothers Model SD3-60 Airplanes [Docket No. FAA-2005-22168; Directorate Identifier 2005-NM-146-AD; Amendment 39-14234; AD 2005-17-13] (RIN: 2120-AA64) received September 12, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4193. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Airbus Model A300 B2 and B4 Airplanes; Model A300 B4-600, B4-600R, and F4-600R Series Airplanes, and Model A300 C4-605R Variant F Airplanes (Collectively Called A300-600 Series Airplanes); and Model A310-200 and -300 Series Airplanes [Docket No. FAA-2005-20794; Directorate Identifier 2004-NM-172-AD; Amendment 39-14235; AD 2005-17-14] (RIN: 2120-AA64) received September 12, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

4194. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Airbus Model A330-

200, A330-300, A340-200, and A340-300 Series Airplanes; and Model A340-541 and -642 Airplanes [Docket No. FAA-2005-22196; Directorate Identifier 2005-NM-170-AD; Amendment 39-14239; AD 2005-17-18] (RIN: 2120-AA64) received September 12, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. BARTON of Texas:

H.R. 3893. A bill to expedite the construction of new refining capacity in the United States, to provide reliable and affordable energy for the American people, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committees on Transportation and Infrastructure, Armed Services, and Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ALEXANDER (for himself, Mr. BAKER, Mr. MCCRERY, Mr. JEFFERSON, Mr. BOUSTANY, Mr. JINDAL, and Mr. MELANCON):

H.R. 3894. A bill to provide for waivers under certain housing assistance programs of the Department of Housing and Urban Development to assist victims of Hurricane Katrina in obtaining housing; to the Committee on Financial Services.

By Mr. BAKER (for himself, Mr. JEFFERSON, Mr. ALEXANDER, Mr. BOUSTANY, and Mr. JINDAL):

H.R. 3895. A bill to amend title V of the Housing Act of 1949 to provide rural housing assistance to families affected by Hurricane Katrina; to the Committee on Financial Services.

By Mr. BAKER (for himself, Mr. JEFFERSON, Mr. ALEXANDER, Mr. BOUSTANY, and Mr. JINDAL):

H.R. 3896. A bill to temporarily suspend, for communities affected by Hurricane Katrina, certain requirements under the community development block grant program; to the Committee on Financial Services.

## ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 521: Ms. FOXX.

H.R. 923: Ms. FOXX and Mr. WEXLER.

H.R. 1526: Ms. LINDA T. SANCHEZ of California.

H.R. 2533: Mr. DAVIS of Tennessee, Mr. FORTENBERRY, Mr. JACKSON of Illinois, and Mr. GILLMOR.

H.R. 2822: Mr. SODREL.

H.R. 3074: Mr. GINGREY.

H.R. 3076: Mr. MILLER of Florida and Ms. GINNY BROWN-WAITE of Florida.

H.R. 3323: Mr. UDALL of New Mexico, Mr. FORTUÑO, and Mr. ANDREWS.

H.R. 3334: Mr. WALSH, Mr. BERRY, Ms. BERKLEY, Ms. HARMAN, Mr. PALLONE, Mr. RANGEL, Mr. LIPINSKI, Mr. COSTELLO, Mr. GUTIERREZ, Mr. SCHIFF, Mr. SCOTT of Georgia, Mr. DICKS, Ms. LINDA T. SANCHEZ of California, Mr. HIGGINS, Ms. WASSERMAN SCHULTZ, Mr. CARDIN, Mr. FATTAH, and Mr. ETHERIDGE.

H.R. 3639: Mr. COSTELLO, Mr. KIRK, Mr. GRIJALVA, and Mr. ROTHMAN.

H.R. 3704: Mr. TANCREDO, Mr. GARY G. MILLER of California, and Mr. DAVIS of Kentucky.

H.R. 3737: Mr. SCHWARZ of Michigan.

H.R. 3748: Mrs. DAVIS of California, Mr. LANTOS, Mr. FILNER, Mr. CONYERS, Mr. BACA, and Mr. PAYNE.

H.R. 3762: Ms. DELAURO, Ms. SCHWARTZ of Pennsylvania, Ms. BERKLEY, Mr. EVANS, Mr. OWENS, Mr. GRIJALVA, Mr. SPRATT, Mr. OBEY, Mr. FITZPATRICK of Pennsylvania, and Mr. GEORGE MILLER of California.

H.R. 3855: Mr. HERGER.

H. Con. Res. 69: Mr. SIMPSON.

H. Con. Res. 173: Mr. RANGEL and Mr. GORDON.

H. Con. Res. 209: Mr. DAVIS of Tennessee, Mr. VAN HOLLEN, Mr. BERMAN, Ms. HERSETH, Mr. SNYDER, Mrs. CHRISTENSEN, Mr. KUHLMAN of New York, Mrs. DRAKE, and Mr. MCGOVERN.

H. Con. Res. 248: Mr. LINCOLN DIAZ-BALART of Florida, Mrs. JONES of Ohio, Mr. REYES, Mr. KENNEDY of Minnesota, Mr. DREIER, Mr. FERGUSON, Mr. MOORE of Kansas, Mr. CASE, Mr. BROWN of Ohio, Mr. MARKEY, Mr. SESSIONS, Mr. ENGEL, Mr. ETHERIDGE, Mr. MEEHAN, Mr. CANNON, Mr. DINGELL, Mr. CLYBURN, Mr. FRANK of Massachusetts, Mr. KING of New York, Mr. BACA, and Mr. BROWN of South Carolina.

H. Res. 325: Mrs. DRAKE.

H. Res. 413: Mr. SOUDER.

## AMENDMENTS

Under clause 8 of rule XVIII, proposed amendments were submitted as follows:

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3824

OFFERED BY: Mr. POMBO

AMENDMENT No. 1: Strike all after enacting clause and insert the following new text:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Threatened and Endangered Species Recovery Act of 2005”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendment references.
- Sec. 3. Definitions.
- Sec. 4. Determinations of endangered species and threatened species.
- Sec. 5. Repeal of critical habitat requirements.
- Sec. 6. Petitions and procedures for determinations and revisions.
- Sec. 7. Reviews of listings and determinations.
- Sec. 8. Secretarial guidelines; State comments.
- Sec. 9. Recovery plans and land acquisitions.
- Sec. 10. Cooperation with States and Indian tribes.
- Sec. 11. Interagency cooperation and consultation.
- Sec. 12. Exceptions to prohibitions.
- Sec. 13. Private property conservation.
- Sec. 14. Public accessibility and accountability.
- Sec. 15. Annual cost analyses.
- Sec. 16. Reimbursement for depredation of livestock by reintroduced species.
- Sec. 17. Authorization of appropriations.
- Sec. 18. Miscellaneous technical corrections.
- Sec. 19. Clerical amendment to table of contents.
- Sec. 20. Certain actions deemed in compliance.

## SEC. 2. AMENDMENT REFERENCES.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to such section or other provision of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

**SEC. 3. DEFINITIONS.**

(a) **BEST AVAILABLE SCIENTIFIC DATA.**—Section 3 (16 U.S.C. 1532) is amended by redesignating paragraphs (2) through (21) in order as paragraphs (3), (4), (5), (6), (7), (8), (9), (10), (11), (13), (14), (15), (16), (17), (18), (19), (20), (21), and (22), respectively, and by inserting before paragraph (3), as so redesignated, the following:

“(2)(A) The term ‘best available scientific data’ means scientific data, regardless of source, that are available to the Secretary at the time of a decision or action for which such data are required by this Act and that the Secretary determines are the most accurate, reliable, and relevant for use in that decision or action.

“(B) Not later than one year after the date of the enactment of the Threatened and Endangered Species Recovery Act of 2005, the Secretary shall issue regulations that establish criteria that must be met to determine which data constitute the best available scientific data for purposes of subparagraph (A).

“(C) If the Secretary determines that data for a decision or action do not comply with the criteria established by the regulations issued under subparagraph (B), do not comply with guidance issued under section 515 of the Treasury and General Government Appropriations Act, 2001 (Public Law 106-554; 114 Stat. 2763A-171) by the Director of the Office of Management and Budget and the Secretary, do not consist of any empirical data, or are found in sources that have not been subject to peer review in a generally acceptable manner—

“(i) the Secretary shall undertake the necessary measures to assure compliance with such criteria or guidance; and

“(ii) the Secretary may—

“(I) secure such empirical data;

“(II) seek appropriate peer review; and

“(III) reconsider the decision or action based on any supplemental or different data provided or any peer review conducted pursuant to this subparagraph.”.

(b) **PERMIT OR LICENSE APPLICANT.**—Section 3 (16 U.S.C. 1532) is further amended by amending paragraph (13), as so redesignated, to read as follows:

“(13) The term ‘permit or license applicant’ means, when used with respect to an action of a Federal agency that is subject to section 7(a) or (b), any person that has applied to such agency for a permit or license or for formal legal approval to perform an act.”.

(c) **JEOPARDIZE THE CONTINUED EXISTENCE.**—Section 3 (16 U.S.C. 1532) is further amended by inserting after paragraph (11) the following:

“(12) The term ‘jeopardize the continued existence’ means, with respect to an agency action (as that term is defined in section 7(a)(2)), that the action reasonably would be expected to significantly impede, directly or indirectly, the conservation in the long-term of the species in the wild.”.

(d) **CONFORMING AMENDMENT.**—Section 7(n) (16 U.S.C. 1536(n)) is amended by striking “section 3(13)” and inserting “section 3(14)”.

**SEC. 4. DETERMINATIONS OF ENDANGERED SPECIES AND THREATENED SPECIES.**

(a) **REQUIREMENT TO MAKE DETERMINATIONS.**—Section 4 (16 U.S.C. 1533) is amended by striking so much as precedes subsection (a)(3) and inserting the following:

“**DETERMINATION OF ENDANGERED SPECIES AND THREATENED SPECIES**

“**SEC. 4. (a) IN GENERAL.**—(1) The Secretary shall by regulation promulgated in accordance with subsection (b) determine whether any species is an endangered species or a threatened species because of any of the following factors:

“(A) The present or threatened destruction, modification, or curtailment of its

habitat or range by human activities, competition from other species, drought, fire, or other catastrophic natural causes.

“(B) Overutilization for commercial, recreational, scientific, or educational purposes.

“(C) Disease or predation.

“(D) The inadequacy of existing regulatory mechanisms, including any efforts identified pursuant to subsection (b)(1).

“(E) Other natural or manmade factors affecting its continued existence.

“(2) The Secretary shall use the authority provided by paragraph (1) to determine any distinct population of any species of vertebrate fish or wildlife to be an endangered species or a threatened species only sparingly.”.

(b) **BASIS FOR DETERMINATION.**—Section 4(b)(1)(A) (16 U.S.C. 1533(b)(1)(A)) is amended—

(1) by striking “best scientific and commercial data available to him” and inserting “best available scientific data”; and

(2) by inserting “Federal agency, any” after “being made by any”.

(c) **LISTS.**—Section 4(c)(2) (16 U.S.C. 1533(c)(2)) is amended to read as follows:

“(2)(A) The Secretary shall—

“(i) conduct, at least once every 5 years, based on the information collected for the biennial reports to the Congress required by paragraph (3) of subsection (f), a review of all species included in a list that is published pursuant to paragraph (1) and that is in effect at the time of such review; and

“(ii) determine on the basis of such review and any other information the Secretary considers relevant whether any such species should—

“(I) be removed from such list;

“(II) be changed in status from an endangered species to a threatened species; or

“(III) be changed in status from a threatened species to an endangered species.

“(B) Each determination under subparagraph (A)(ii) shall be made in accordance with subsections (a) and (b).”.

**SEC. 5. REPEAL OF CRITICAL HABITAT REQUIREMENTS.**

(a) **REPEAL OF REQUIREMENT.**—Section 4(a) (16 U.S.C. 1533(a)) is amended by striking paragraph (3).

(b) **CONFORMING AMENDMENTS.**—

(1) Section 3 (16 U.S.C. 1532), as amended by section 3 of this Act, is further amended by striking paragraph (6) and by redesignating paragraphs (7) through (22) in order as paragraphs (6) through (21).

(2) Section 4(b) (16 U.S.C. 1533(b)), as otherwise amended by this Act, is further amended by striking paragraph (2), and by redesignating paragraphs (3) through (8) in order as paragraphs (2) through (7), respectively.

(3) Section 4(b) (16 U.S.C. 1533(b)) is further amended in paragraph (2), as redesignated by paragraph (2) of this subsection, by striking subparagraph (D).

(4) Section 4(b) (16 U.S.C. 1533(b)) is further amended in paragraph (4), as redesignated by paragraph (2) of this subsection, by striking “determination, designation, or revision referred to in subsection (a)(1) or (3)” and inserting “determination referred to in subsection (a)(1)”.

(5) Section 4(b) (16 U.S.C. 1533(b)) is further amended in paragraph (7), as redesignated by paragraph (2) of this subsection, by striking “; and if such regulation” and all that follows through the end of the sentence and inserting a period.

(6) Section 4(c)(1) (16 U.S.C. 1533(c)(1)) is amended—

(A) in the second sentence—

(i) by inserting “and” after “if any”; and

(ii) by striking “, and specify any” and all that follows through the end of the sentence and inserting a period; and

(B) in the third sentence by striking “, designations.”.

(7) Section 5 (16 U.S.C. 1534), as amended by section 9(a)(3) of this Act, is further amended in subsection (j)(2) by striking “section 4(b)(7)” and inserting “section 4(b)(6)”.

(8) Section 6(c) (16 U.S.C. 1535(c)), as amended by section 10(1) of this Act, is further amended in paragraph (3) by striking “section 4(b)(3)(B)(iii)” each place it appears and inserting “section 4(b)(2)(B)(iii)”.

(9) Section 7 (16 U.S.C. 1536) is amended—

(A) in subsection (a)(2) in the first sentence by striking “or result in the destruction or adverse modification of any habitat of such species” and all that follows through the end of the sentence and inserting a period;

(B) in subsection (a)(4) in the first sentence by striking “or result” and all that follows through the end of the sentence and inserting a period; and

(C) in subsection (b)(3)(A) by striking “or its critical habitat”.

(10) Section 10(j)(2)(C)) (16 U.S.C. 1539(j)(2)(C)), as amended by section 12(c) of this Act, is further amended—

(A) by striking “that—” and all that follows through “(i) solely” and inserting “that solely”; and

(B) by striking “; and” and all that follows through the end of the sentence and inserting a period.

**SEC. 6. PETITIONS AND PROCEDURES FOR DETERMINATIONS AND REVISIONS.**

(a) **TREATMENT OF PETITIONS.**—Section 4(b) (16 U.S.C. 1533(b)) is amended in paragraph (2), as redesignated by section 5(b)(2) of this Act, by adding at the end of subparagraph (A) the following: “The Secretary shall not make a finding that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted unless the petitioner provides to the Secretary a copy of all information cited in the petition.”.

(b) **IMPLEMENTING REGULATIONS.**—

(1) **PROPOSED REGULATIONS.**—Section 4(b) (16 U.S.C. 1533(b)) is amended—

(A) in paragraph (4)(A), as redesignated by section 5(b)(2) of this Act—

(i) in clause (i) by striking “, and” and inserting a semicolon;

(ii) in clause (ii) by striking “to the State agency in” and inserting “to the Governor of, and the State agency in.”;

(iii) in clause (ii) by striking “such agency” and inserting “such Governor or agency”;

(iv) in clause (ii) by inserting “and” after the semicolon at the end; and

(v) by adding at the end the following:

“(iii) maintain, and shall make available, a complete record of all information concerning the determination or revision in the possession of the Secretary, on a publicly accessible website on the Internet, including an index to such information.”; and

(B) by adding at the end the following:

“(8)(A) Information maintained and made available under paragraph (5)(A)(iii) shall include any status review, all information cited in such a status review, all information referred to in the proposed regulation and the preamble to the proposed regulation, and all information submitted to the Secretary by third parties.

“(B) The Secretary shall withhold from public review under paragraph (5)(A)(iii) any information that may be withheld under 552 of title 5, United States Code.”.

(2) **FINAL REGULATIONS.**—Paragraph (5) of section 4(b) (16 U.S.C. 1533(b)), as amended by section 5(b)(2) of this Act, is further amended—

(A) in subparagraph (A) by striking clauses (i) and (ii) and inserting the following:

“(i) a final regulation to implement such a determination of whether a species is an endangered species or a threatened species;

“(ii) notice that such one-year period is being extended under subparagraph (B)(i); or

“(iii) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based.”;

(B) in subparagraph (B)(i) by striking “subparagraph (A)(i)” and inserting “subparagraph (A)”;

(C) in subparagraph (B)(ii) by striking “subparagraph (A)(i)” and inserting “subparagraph (A)”;

(D) by striking subparagraph (C).

(3) **EMERGENCY DETERMINATIONS.**—Paragraph (6) of section 4(b) (16 U.S.C. 1533(b)), as redesignated by section 5(b)(2) of this Act, is further amended—

(A) in the matter preceding subparagraph (A), by inserting “with respect to a determination of a species to be an endangered species or a threatened species” after “any regulation”;

(B) in subparagraph (B), by striking “the State agency in” and inserting “the Governor of, and State agency in.”.

#### **SEC. 7. REVIEWS OF LISTINGS AND DETERMINATIONS.**

Section 4(c) (16 U.S.C. 1533(c)) is amended by inserting at the end the following:

“(3) Each determination under paragraph (2)(B) shall consider one of the following:

“(A) Except as provided in subparagraph (B) of this paragraph, the criteria in the recovery plan for the species required by section 5(c)(1)(A) or (B).

“(B) If the recovery plan is issued before the criteria required under section 5(c)(1)(A) and (B) are established or if no recovery plan exists for the species, the factors for determination that a species is an endangered species or a threatened species set forth in subsections (a)(1) and (b)(1).

“(C) A finding of fundamental error in the determination that the species is an endangered species, a threatened species, or extinct.

“(D) A determination that the species is no longer an endangered species or threatened species or in danger of extinction, based on an analysis of the factors that are the basis for listing under section 4(a)(1).”.

#### **SEC. 8. SECRETARIAL GUIDELINES; STATE COMMENTS.**

Section 4 (16 U.S.C. 1533) is amended—

(1) by striking subsections (f) and (g) and redesignating subsections (h) and (i) as subsections (f) and (g), respectively;

(2) in subsection (f), as redesignated by paragraph (1) of this subsection—

(A) in the heading by striking “AGENCY” and inserting “SECRETARIAL”;

(B) in the matter preceding paragraph (1), by striking “the purposes of this section are achieved” and inserting “this section is implemented”;

(C) by redesignating paragraph (4) as paragraph (5);

(D) in paragraph (3) by striking “and” after the semicolon at the end, and by inserting after paragraph (3) the following:

“(4) the criteria for determining best available scientific data pursuant to section 3(2); and”;

(E) in paragraph (5), as redesignated by subparagraph (C) of this paragraph, by striking “subsection (f) of this section” and inserting “section 5”;

(3) in subsection (g), as redesignated by paragraph (1) of this section—

(A) by inserting “COMMENTS.—” before the first sentence;

(B) by striking “a State agency” the first place it appears and inserting “a Governor, State agency, county (or equivalent jurisdiction), or unit of local government”;

(C) by striking “a State agency” the second place it appears and inserting “a Governor, State agency, county (or equivalent jurisdiction), or unit of local government”;

(D) by striking “the State agency” and inserting “the Governor, State agency, county (or equivalent jurisdiction), or unit of local government, respectively”;

(E) by striking “agency’s”.

#### **SEC. 9. RECOVERY PLANS AND LAND ACQUISITIONS.**

(a) **IN GENERAL.**—Section 5 (16 U.S.C. 1534) is amended—

(1) by redesignating subsections (a) and (b) as subsections (k) and (l), respectively;

(2) in subsection (l), as redesignated by paragraph (1) of this section, by striking “subsection (a) of this section” and inserting “subsection (k)”;

(3) by striking so much as precedes subsection (k), as redesignated by paragraph (1) of this section, and inserting the following:

##### **“RECOVERY PLANS AND LAND ACQUISITION**

“**SEC. 5. (a) RECOVERY PLANS.**—The Secretary shall, in accordance with this section, develop and implement a plan (in this subsection referred to as a ‘recovery plan’) for the species determined under section 4(a)(1) to be an endangered species or a threatened species, unless the Secretary finds that such a plan will not promote the conservation and survival of the species.

“(b) **DEVELOPMENT OF RECOVERY PLANS.**—(1) Subject to paragraphs (2) and (3), the Secretary, in developing recovery plans, shall, to the maximum extent practicable, give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity.

“(2) In the case of any species determined to be an endangered species or threatened species after the date of the enactment of the Threatened and Endangered Species Recovery Act of 2005, the Secretary shall publish a final recovery plan for a species within 2 years after the date the species is listed under section 4(c).

“(3)(A) For those species that are listed under section 4(c) on the date of enactment of the Threatened and Endangered Species Recovery Act of 2005 and are described in subparagraph (B) of this paragraph, the Secretary, after providing for public notice and comment, shall—

“(i) not later than 1 year after such date, publish in the Federal Register a priority ranking system for preparing or revising such recovery plans that is consistent with paragraph (1) and takes into consideration the scientifically based needs of the species; and

“(ii) not later than 18 months after such date, publish in the Federal Register a list of such species ranked in accordance with the priority ranking system published under clause (i) for which such recovery plans will be developed or revised, and a tentative schedule for such development or revision.

“(B) A species is described in this subparagraph if—

“(i) a recovery plan for the species is not published under this Act before the date of enactment of the Threatened and Endangered Species Recovery Act of 2005 and the Secretary finds such a plan would promote the conservation and survival of the species; or

“(ii) a recovery plan for the species is published under this Act before such date of enactment and the Secretary finds revision of such plan is warranted.

“(C)(i) The Secretary shall, to the maximum extent practicable, adhere to the list

and tentative schedule published under subparagraph (A)(ii) in developing or revising recovery plans pursuant to this paragraph.

“(ii) The Secretary shall provide the reasons for any deviation from the list and tentative schedule published under subparagraph (A)(ii), in each report to the Congress under subsection (e).

“(4) The Secretary, using the priority ranking system required under paragraph (3), shall prepare or revise such plans within 10 years after the date of the enactment of the Threatened and Endangered Species Recovery Act of 2005.

“(c) **PLAN CONTENTS.**—(1)(A) Except as provided in subparagraph (E), a recovery plan shall be based on the best available scientific data and shall include the following:

“(i) Objective, measurable criteria that, when met, would result in a determination, in accordance with this section, that the species to which the recovery plan applies be removed from the lists published under section 4(c) or be reclassified from an endangered species to a threatened species.

“(ii) A description of such site-specific or other measures that would achieve the criteria established under clause (i), including such intermediate measures as are warranted to effect progress toward achievement of the criteria.

“(iii) Estimates of the time required and the costs to carry out those measures described under clause (ii), including, to the extent practicable, estimated costs for any recommendations, by the recovery team, or by the Secretary if no recovery team is selected, that any of the areas identified under clause (iv) be acquired on a willing seller basis.

“(iv) An identification of those specific areas that are of special value to the conservation of the species.

“(B) Those members of any recovery team appointed pursuant to subsection (d) with relevant scientific expertise, or the Secretary if no recovery team is appointed, shall, based solely on the best available scientific data, establish the objective, measurable criteria required under subparagraph (A)(i).

“(C)(i) If the recovery team, or the Secretary if no recovery team is appointed, determines in the recovery plan that insufficient best available scientific data exist to determine criteria or measures under subparagraph (A) that could achieve a determination to remove the species from the lists published under section 4(c), the recovery plan shall contain interim criteria and measures that are likely to improve the status of the species.

“(ii) If a recovery plan does not contain the criteria and measures provided for by clause (i) of subparagraph (A), the recovery team for the plan, or by the Secretary if no recovery team is appointed, shall review the plan at intervals of no greater than 5 years and determine if the plan can be revised to contain the criteria and measures required under subparagraph (A).

“(iii) If the recovery team or the Secretary, respectively, determines under clause (ii) that a recovery plan can be revised to add the criteria and measures provided for under subparagraph (A), the recovery team or the Secretary, as applicable, shall revise the recovery plan to add such criteria and measures within 2 years after the date of the determination.

“(D) In specifying measures in a recovery plan under subparagraph (A), a recovery team or the Secretary, as applicable, shall—

“(i) whenever possible include alternative measures; and

“(ii) in developing such alternative measures, the Secretary shall seek to identify,

among such alternative measures of comparable expected efficacy, the alternative measures that are least costly.

“(E) Estimates of time and costs pursuant to subparagraph (A)(iii), and identification of the least costly alternatives pursuant to subparagraph (D)(ii), are not required to be based on the best available scientific data.

“(2) Any area that, immediately before the enactment of the Threatened and Endangered Species Recovery Act of 2005, is designated as critical habitat of an endangered species or threatened species shall be treated as an area described in subparagraph (A)(iv) until a recovery plan for the species is developed or the existing recovery plan for the species is revised pursuant to subsection (b)(3).

“(d) RECOVERY TEAMS.—(1) The Secretary shall promulgate regulations that provide for the establishment of recovery teams for development of recovery plans under this section.

“(2) Such regulations shall—

“(A) establish criteria and the process for selecting the members of recovery teams, and the process for preparing recovery plans, that ensure that each team—

“(i) is of a size and composition to enable timely completion of the recovery plan; and

“(ii) includes sufficient representation from constituencies with a demonstrated direct interest in the species and its conservation or in the economic and social impacts of its conservation to ensure that the views of such constituencies will be considered in the development of the plan;

“(B) include provisions regarding operating procedures of and recordkeeping by recovery teams;

“(C) ensure that recovery plans are scientifically rigorous and that the evaluation of costs required by paragraphs (1)(A)(iii) and (1)(D) of subsection (c) are economically rigorous; and

“(D) provide guidelines for circumstances in which the Secretary may determine that appointment of a recovery team is not necessary or advisable to develop a recovery plan for a specific species, including procedures to solicit public comment on any such determination.

“(3) The Federal Advisory Committee Act (5 App. U.S.C.) shall not apply to recovery teams appointed in accordance with regulations issued by the Secretary under this subsection.

“(e) REPORTS TO CONGRESS.—(1) The Secretary shall report every two years to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate on the status of all domestic endangered species and threatened species and the status of efforts to develop and implement recovery plans for all domestic endangered species and threatened species.

“(2) In reporting on the status of such species since the time of its listing, the Secretary shall include—

“(A) an assessment of any significant change in the well-being of each such species, including—

“(i) changes in population, range, or threats; and

“(ii) the basis for that assessment; and

“(B) for each species, a measurement of the degree of confidence in the reported status of such species, based upon a quantifiable parameter developed for such purposes.

“(f) PUBLIC NOTICE AND COMMENT.—The Secretary shall, prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan. The Secretary shall consider all information presented during the public comment period prior to approval of the plan.

“(g) STATE COMMENT.—The Secretary shall, prior to final approval of a new or revised recovery plan, provide a draft of such plan and an opportunity to comment on such draft to the Governor of, and State agency in, any State to which such draft would apply. The Secretary shall include in the final recovery plan the Secretary's response to the comments of the Governor and the State agency.

“(h) CONSULTATION TO ENSURE CONSISTENCY WITH DEVELOPMENT PLAN.—(1) The Secretary shall, prior to final approval of a new or revised recovery plan, consult with any pertinent State, Indian tribe, or regional or local land use agency or its designee.

“(2) For purposes of this Act, the term ‘Indian tribe’ means—

“(A) with respect to the 48 contiguous States, any federally recognized Indian tribe, organized band, pueblo, or community; and

“(B) with respect to Alaska, the Metlakatla Indian Community.

“(i) USE OF PLANS.—(1) Each Federal agency shall consider any relevant best available scientific data contained in a recovery plan in any analysis conducted under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

“(2)(A)(i) The head of any Federal agency may enter into an agreement with the Secretary specifying the measures the agency will carry out to implement a recovery plan.

“(ii) Each such agreement shall be published in draft form with notice and an opportunity for public comment.

“(iii) Each such final agreement shall be published, with responses by the head of the Federal agency to any public comments submitted on the draft agreement.

“(B) Nothing in a recovery plan shall be construed to establish regulatory requirements.

“(j) MONITORING.—(1) The Secretary shall implement a system in cooperation with the States to monitor effectively for not less than five years the status of all species that have recovered to the point at which the measures provided pursuant to this Act are no longer necessary and that, in accordance with this section, have been removed from the lists published under section 4(c).

“(2) The Secretary shall make prompt use of the authority under section 4(b)(7) to prevent a significant risk to the well-being of any such recovered species.”.

(b) RECOVERY PLANS FOR SPECIES OCCUPYING MORE THAN ONE STATE.—Section 6 (16 U.S.C. 1535) is amended by adding at the end the following:

“(j) RECOVERY PLANS FOR SPECIES OCCUPYING MORE THAN ONE STATE.—Any recovery plan under section 5 for an endangered species or a threatened species that occupies more than one State shall identify criteria and actions pursuant to subsection (c)(1) of section 5 for each State that are necessary so that the State may pursue a determination that the portion of the species found in that State may be removed from lists published under section 4(c).”.

(c) THREATENED AND ENDANGERED SPECIES INCENTIVES PROGRAM.—

(1) AGREEMENTS AUTHORIZED.—Section 5 (16 U.S.C. 1534) is further amended by adding at the end the following:

“(m) THREATENED AND ENDANGERED SPECIES INCENTIVES PROGRAM.—(1) The Secretary may enter into species recovery agreements pursuant to paragraph (2) and species conservation contract agreements pursuant to paragraph (3) with persons, other than agencies or departments of the Federal Government or State governments, under which the Secretary is obligated, subject to the availability of appropriations, to make annual payments or provide other compensation to the persons to implement the agreements.

“(2)(A) The Secretary and persons who own or control the use of private land may enter into species recovery agreements with a term of not less than 5 years that meet the criteria set forth in subparagraph (B) and are in accordance with the priority established in subparagraph (C).

“(B) A species recovery agreement entered into under this paragraph by the Secretary with a person—

“(i) shall require that the person shall carry out, on the land owned or controlled by the person, activities that—

“(I) protect and restore habitat for covered species that are species determined to be endangered species or threatened species pursuant to section 4(a)(1);

“(II) contribute to the conservation of one or more covered species; and

“(III) specify and implement a management plan for the covered species;

“(ii) shall specify such a management plan that includes—

“(I) identification of the covered species;

“(II) a description of the land to which the agreement applies; and

“(III) a description of, and a schedule to carry out, the activities under clause (i);

“(iii) shall provide sufficient documentation to establish ownership or control by the person of the land to which the agreement applies;

“(iv) shall include the amounts of the annual payments or other compensation to be provided by the Secretary to the person under the agreement, and the terms under which such payments or compensation shall be provided; and

“(v) shall include—

“(I) the duties of the person;

“(II) the duties of the Secretary;

“(III) the terms and conditions under which the person and the Secretary mutually agree the agreement may be modified or terminated; and

“(IV) acts or omissions by the person or the Secretary that shall be considered violations of the agreement, and procedures under which notice of and an opportunity to remedy any violation by the person or the Secretary shall be given.

“(C) In entering into species recovery agreements under this paragraph, the Secretary shall accord priority to agreements that apply to any areas that are identified in recovery plans pursuant to subsection (c)(1)(A)(iv).

“(3)(A) The Secretary and persons who own private land may enter into species conservation contract agreements with terms of 30 years, 20 years, or 10 years that meet the criteria set forth in subparagraph (B) and standards set forth in subparagraph (D) and are in accordance with the priorities established in subparagraph (C).

“(B) A species conservation contract agreement entered into under this paragraph by the Secretary with a person—

“(i) shall provide that the person shall, on the land owned by the person—

“(I) carry out conservation practices to meet one or more of the goals set forth in clauses (i) through (iii) of subparagraph (C) for one or more covered species, that are species that are determined to be endangered species or threatened species pursuant to section 4(a)(1), species determined to be candidate species pursuant to section 4(b)(3)(B)(iii), or species subject to comparable designations under State law; and

“(II) specify and implement a management plan for the covered species;

“(ii) shall specify such a management plan that includes—

“(I) identification of the covered species;

“(II) a description in detail of the conservation practices for the covered species that the person shall undertake;

“(III) a description of the land to which the agreement applies; and

“(IV) a schedule of approximate deadlines, whether one-time or periodic, for undertaking the conservation practices described pursuant to subclause (II);

“(V) a description of existing or future economic activities on the land to which the agreement applies that are compatible with the conservation practices described pursuant to subclause (II) and generally with conservation of the covered species;

“(iii) shall specify the term of the agreement; and

“(iv) shall include—

“(I) the duties of the person;

“(II) the duties of the Secretary;

“(III) the terms and conditions under which the person and the Secretary mutually agree the agreement may be modified or terminated;

“(IV) acts or omissions by the person or the Secretary that shall be considered violations of the agreement, and procedures under which notice of and an opportunity to remedy any violation by the person or the Secretary shall be given; and

“(V) terms and conditions for early termination of the agreement by the person before the management plan is fully implemented or termination of the agreement by the Secretary in the case of a violation by the person that is not remedied under subclause (IV), including any requirement for the person to refund all or part of any payments received under subparagraph (E) and any interest thereon.

“(C) The Secretary shall establish priorities for the selection of species conservation contract agreements, or groups of such agreements for adjacent or proximate lands, to be entered into under this paragraph that address the following factors:

“(i) The potential of the land to which the agreement or agreements apply to contribute significantly to the conservation of an endangered species or threatened species or a species with a comparable designation under State law.

“(ii) The potential of such land to contribute significantly to the improvement of the status of a candidate species or a species with a comparable designation under State law.

“(iii) The amount of acreage of such land.

“(iv) The number of covered species in the agreement or agreements.

“(v) The degree of urgency for the covered species to implement the conservation practices in the management plan or plans under the agreement or agreements.

“(vi) Land in close proximity to military test and training ranges, installations, and associated airspace that is affected by a covered species.

“(D) The Secretary shall enter into a species conservation contract agreement submitted by a person, if the Secretary finds that the person owns such land or has sufficient control over the use of such land to ensure implementation of the management plan under the agreement.

“(E)(i) Upon entering into a species conservation contract agreement with the Secretary pursuant to this paragraph, a person shall receive the financial assistance provided for in this subparagraph.

“(ii) If the person is implementing fully the agreement, the person shall receive from the Secretary—

“(I) in the case of a 30-year agreement, an annual contract payment in an amount equal to 100 percent of the person's actual costs to implement the conservation practices described in the management plan under the terms of the agreement;

“(II) in the case of a 20-year agreement, an annual contract payment in an amount

equal to 80 percent of the person's actual costs to implement the conservation practices described in the management plan under the terms of the agreement; and

“(III) in the case of a 10-year agreement, an annual contract payment in an amount equal to 60 percent of the person's actual costs to implement the conservation practices described in the management plan under the terms of the agreement.

“(iii)(I) If the person receiving contract payments pursuant to clause (ii) receives any other State or Federal funds to defray the cost of any conservation practice, the cost of such practice shall not be eligible for such contract payments.

“(II) Contributions of agencies or organizations to any conservation practice other than the funds described in subclause (I) shall not be considered as costs of the person for purposes of the contract payments pursuant to clause (iii).

“(4)(A) Upon request of a person seeking to enter into an agreement pursuant to this subsection, the Secretary may provide to such person technical assistance in the preparation, and management training for the implementation, of the management plan for the agreement.

“(B) Any State agency, local government, nonprofit organization, or federally recognized Indian tribe may provide assistance to a person in the preparation of a management plan, or participate in the implementation of a management plan, including identifying and making available certified fisheries or wildlife biologists with expertise in the conservation of species for purposes of the preparation or review and approval of management plans for species conservation contract agreements under paragraph (3)(D)(iii).

“(5) Upon any conveyance or other transfer of interest in land that is subject to an agreement under this subsection—

“(A) the agreement shall terminate if the agreement does not continue in effect under subparagraph (B);

“(B) the agreement shall continue in effect with respect to such land, with the same terms and conditions, if the person to whom the land or interest is conveyed or otherwise transferred notifies the Secretary of the person's election to continue the agreement by no later than 30 days after the date of the conveyance or other transfer and the person is determined by the Secretary to qualify to enter into an agreement under this subsection; or

“(C) the person to whom the land or interest is conveyed or otherwise transferred may seek a new agreement under this subsection.

“(6) An agreement under this subsection may be renewed with the mutual consent of the Secretary and the person who entered into the agreement or to whom the agreement has been transferred under paragraph (5).

“(7) The Secretary shall make annual payments under this subsection as soon as possible after December 31 of each calendar year.

“(8) An agreement under this subsection that applies to an endangered species or threatened species shall, for the purpose of section 10(a)(4), be deemed to be a permit to enhance the propagation or survival of such species under section 10(a)(1), and a person in full compliance with the agreement shall be afforded the protection of section 10(a)(4).

“(9) The Secretary, or any other Federal official, may not require a person to enter into an agreement under this subsection as a term or condition of any right, privilege, or benefit, or of any action or refraining from any action, under this Act.”.

(2) Subsection (e)(2) of section 7 (16 U.S.C. 1536) (as redesignated by section 11(d)(2) of this Act) is amended by inserting “or in an

agreement under section 5(m)” after “section”.

(d) CONFORMING AMENDMENTS.—

(1) Section 6(d)(1) (16 U.S.C. 1535(d)(1)) is amended by striking “section 4(g)” and inserting “section 5(j)”.

(2) The Marine Mammal Protection Act of 1972 is amended—

(A) in section 104(c)(4)(A)(ii) (16 U.S.C. 1374(c)(4)(A)(ii)) by striking “section 4(f)” and inserting “section 5”; and

(B) in section 115(b)(2) (16 U.S.C. 1383b(b)(2)) by striking “section 4(f) of the Endangered Species Act of 1973 (16 U.S.C. 1533(f))” and inserting “section 5 of the Endangered Species Act of 1973”.

#### SEC. 10. COOPERATION WITH STATES AND INDIAN TRIBES.

Section 6 (16 U.S.C. 1535) is further amended—

(1) in subsection (c), by adding at the end the following:

“(3)(A) Any cooperative agreement entered into by the Secretary under this subsection may also provide for development of a program for conservation of species determined to be candidate species pursuant to section 4(b)(3)(B)(iii) or any other species that the State and the Secretary agree is at risk of being determined to be an endangered species or threatened species under section 4(a)(1) in that State. Upon completion of consultation on the agreement pursuant to subsection (e)(2), any incidental take statement issued on the agreement shall apply to any such species, and to the State and any landowners enrolled in any program under the agreement, without further consultation (except any additional consultation pursuant to subsection (e)(2)) if the species is subsequently determined to be an endangered species or a threatened species and the agreement remains an adequate and active program for the conservation of endangered species and threatened species.

“(B) Any cooperative agreement entered into by the Secretary under this subsection may also provide for monitoring or assistance in monitoring the status of candidate species pursuant to section 4(b)(3)(C)(iii) or recovered species pursuant to section 5(j).

“(C) The Secretary shall periodically review each cooperative agreement under this subsection and seek to make changes the Secretary considers necessary for the conservation of endangered species and threatened species to which the agreement applies.

“(4) Any cooperative agreement entered into by the Secretary under this subsection that provides for the enrollment of private lands or water rights in any program established by the agreement shall ensure that the decision to enroll is voluntary for each owner of such lands or water rights.

“(5)(A) The Secretary may enter into a cooperative agreement under this subsection with an Indian tribe in substantially the same manner in which the Secretary may enter into a cooperative agreement with a State.

“(B) For the purposes of this paragraph, the term ‘Indian tribe’ means—

“(i) with respect to the 48 contiguous States, any federally recognized Indian tribe, organized band, pueblo, or community; and

“(ii) with respect to Alaska, the Metlakatla Indian Community.”;

(2) in subsection (d)(1)—

(A) by striking “pursuant to subsection (c) of this section”; and

(B) by striking “or to assist” and all that follows through “section 5(j)” and inserting “pursuant to subsection (c)(1) and (2) or to address candidate species or other species at risk and recovered species pursuant to subsection (c)(3)”; and

(C) in subparagraph (F), by striking “monitoring the status of candidate species” and

inserting “developing a conservation program for, or monitoring the status of, candidate species or other species determined to be at risk pursuant to subsection (c)(3)”; and

(3) in subsection (e)—

(A) by inserting “(1)” before the first sentence;

(B) in paragraph (1), as designated by subparagraph (A) of this paragraph, by striking “at no greater than annual intervals” and inserting “every 3 years”; and

(C) by adding at the end the following:

“(2) Any cooperative agreement entered into by the Secretary under subsection (c) shall be subject to section 7(a)(2) through (d) and regulations implementing such provisions only before—

“(A) the Secretary enters into the agreement; and

“(B) the Secretary approves any renewal of, or amendment to, the agreement that—

“(i) addresses species that are determined to be endangered species or threatened species, are not addressed in the agreement, and may be affected by the agreement; or

“(ii) new information about any species addressed in the agreement that the Secretary determines—

“(I) constitutes the best available scientific data; and

“(II) indicates that the agreement may have adverse effects on the species that had not been considered previously when the agreement was entered into or during any revision thereof or amendment thereto.

“(3) The Secretary may suspend any cooperative agreement established pursuant to subsection (c), after consultation with the Governor of the affected State, if the Secretary finds during the periodic review required by paragraph (1) of this subsection that the agreement no longer constitutes an adequate and active program for the conservation of endangered species and threatened species.

“(4) The Secretary may terminate any cooperative agreement entered into by the Secretary under subsection (c), after consultation with the Governor of the affected State, if—

“(A) as result of the procedures of section 7(a)(2) through (d) undertaken pursuant to paragraph (2) of this subsection, the Secretary determines that continued implementation of the cooperative agreement is likely to jeopardize the continued existence of endangered species or threatened species, and the cooperative agreement is not amended or revised to incorporate a reasonable and prudent alternative offered by the Secretary pursuant to section 7(b)(3); or

“(B) the cooperative agreement has been suspended under paragraph (3) of this subsection and has not been amended or revised and found by the Secretary to constitute an adequate and active program for the conservation of endangered species and threatened species within 180 days after the date of the suspension.”

#### SEC. 11. INTERAGENCY COOPERATION AND CONSULTATION.

(a) CONSULTATION REQUIREMENT.—Section 7(a) (16 U.S.C. 1536(a)) is amended—

(1) in paragraph (1) in the second sentence, by striking “endangered species” and all that follows through the end of the sentence and inserting “species determined to be endangered species and threatened species under section 4.”;

(2) in paragraph (2)—

(A) in the first sentence by striking “action” the first place it appears and all that follows through “is not” and inserting “agency action authorized, funded, or carried out by such agency is not”;

(B) in the first sentence by striking “, unless” and all that follows through the end of the sentence and inserting a period;

(C) in the second sentence, by striking “best scientific and commercial data available” and inserting “best available scientific data”; and

(D) by inserting “(A)” before the first sentence, and by adding at the end the following:

“(B) The Secretary may identify specific agency actions or categories of agency actions that may be determined to meet the standards of this paragraph by alternative procedures to the procedures set forth in this subsection and subsections (b) through (d), except that subsections (b)(4) and (e) may apply only to an action that the Secretary finds, or concurs, does meet such standards, and the Secretary shall suggest, or concur in any suggested, reasonable and prudent alternatives described in subsection (b)(3) for any action determined not to meet such standards. Any such agency action or category of agency actions shall be identified, and any such alternative procedures shall be established, by regulation promulgated prior or subsequent to the date of the enactment of this Act.”;

(3) in paragraph (4)—

(A) by striking “listed under section 4” and inserting “an endangered species or a threatened species”; and

(B) by inserting “, under section 4” after “such species”; and

(4) by adding at the end the following:

“(5) Any Federal agency or the Secretary, in conducting any analysis pursuant to paragraph (2), shall consider only the effects of any agency action that are distinct from a baseline of all effects upon the relevant species that have occurred or are occurring prior to the action.”

(b) OPINION OF SECRETARY.—Section 7(b) (16 U.S.C. 1536(b)) is amended—

(1) in paragraph (1)(B)(i) by inserting “permit or license” before “applicant”;

(2) in paragraph (2) by inserting “permit or license” before “applicant”;

(3) in paragraph (3)(A)—

(A) in the first sentence—

(i) by striking “Promptly after” and inserting “Before”;

(ii) by inserting “permit or license” before “applicant”; and

(iii) by inserting “proposed” before “written statement”; and

(B) by striking all after the first sentence and inserting the following: “The Secretary shall consider any comment from the Federal agency and the permit or license applicant, if any, prior to issuance of the final written statement of the Secretary’s opinion. The Secretary shall issue the final written statement of the Secretary’s opinion by providing the written statement to the Federal agency and the permit or license applicant, if any, and publishing notice of the written statement in the Federal Register. If jeopardy is found, the Secretary shall suggest in the final written statement those reasonable and prudent alternatives, if any, that the Secretary believes would not violate subsection (a)(2) and can be taken by the Federal agency or applicant in implementing the agency action. The Secretary shall cooperate with the Federal agency and any permit or license applicant in the preparation of any suggested reasonable and prudent alternatives.”;

(4) in paragraph (4)—

(A) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively;

(B) by inserting “(A)” after “(4)”;

(C) by striking “the Secretary shall provide” and all that follows through “with a written statement that—” and inserting the following: “the Secretary shall include in the written statement under paragraph (3), a

statement described in subparagraph (B) of this paragraph.

“(B) A statement described in this subparagraph—”; and

(5) by adding at the end the following:

“(5)(A) Any terms and conditions set forth pursuant to paragraph (4)(B)(iv) shall be roughly proportional to the impact of the incidental taking identified pursuant to paragraph (4) in the written statement prepared under paragraph (3).

“(B) If various terms and conditions are available to comply with paragraph (4)(B)(iv), the terms and conditions set forth pursuant to that paragraph—

“(i) must be capable of successful implementation; and

“(ii) must be consistent with the objectives of the Federal agency and the permit or license applicant, if any, to the greatest extent possible.”.

(c) BIOLOGICAL ASSESSMENTS.—Section 7(c) (16 U.S.C. 1536(c)) is amended—

(1) by striking “(1)”;

(2) by striking paragraph (2);

(3) in the first sentence, by striking “which is listed” and all that follows through the end of the sentence and inserting “that is determined to be an endangered species or a threatened species, or for which such a determination is proposed pursuant to section 4, may be present in the area of such proposed action.”; and

(4) in the second sentence, by striking “best scientific and commercial data available” and inserting “best available scientific data”.

(d) ELIMINATION OF ENDANGERED SPECIES COMMITTEE PROCESS.—Section 7 (16 U.S.C. 1536) is amended—

(1) by repealing subsections (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n);

(2) by redesignating subsections (o) and (p) as subsections (e) and (f), respectively;

(3) in subsection (e), as redesignated by paragraph (2) of this subsection—

(A) in the heading, by striking “EXEMPTION AS PROVIDING”; and

(B) by striking “such section” and all that follows through “(2)” and inserting “such section.”; and

(4) in subsection (f), as redesignated by paragraph (2) of this subsection—

(A) in the first sentence, by striking “is authorized” and all that follows through “of this section” and inserting “may exempt an agency action from compliance with the requirements of subsections (a) through (d) of this section before the initiation of such agency action.”; and

(B) by striking the second sentence.

#### SEC. 12. EXCEPTIONS TO PROHIBITIONS.

(a) INCIDENTAL TAKE PERMITS.—Section 10(a)(2) (16 U.S.C. 1539(a)(2)) is amended—

(1) in subparagraph (A) by striking “and” after the semicolon at the end of clause (iii), by redesignating clause (iv) as clause (vii), and by inserting after clause (iii) the following:

“(iv) objective, measurable biological goals to be achieved for species covered by the plan and specific measures for achieving such goals consistent with the requirements of subparagraph (B);

“(v) measures the applicant will take to monitor impacts of the plan on covered species and the effectiveness of the plan’s measures in achieving the plan’s biological goals;

“(vi) adaptive management provisions necessary to respond to all reasonably foreseeable changes in circumstances that could appreciably reduce the likelihood of the survival and recovery of any species covered by the plan; and”;

(2) in subparagraph (B) by striking “and” after the semicolon at the end of clause (iv), by redesignating clause (v) as clause (vi), and by inserting after clause (iv) the following:



“(v) the term of the permit is reasonable, taking into consideration—

“(I) the period in which the applicant can be expected to diligently complete the principal actions covered by the plan;

“(II) the extent to which the plan will enhance the conservation of covered species;

“(III) the adequacy of information underlying the plan;

“(IV) the length of time necessary to implement and achieve the benefits of the plan; and

“(V) the scope of the plan’s adaptive management strategy; and”;

(3) by striking subparagraph (C) and inserting the following:

“(3) Any terms and conditions offered by the Secretary pursuant to paragraph (2)(B) to reduce or offset the impacts of incidental taking shall be roughly proportional to the impact of the incidental taking specified in the conservation plan pursuant to in paragraph (2)(A)(i). This paragraph shall not be construed to limit the authority of the Secretary to require greater than acre-for-acre mitigation where necessary to address the extent of such impacts. In any case in which various terms and conditions are available, the terms and conditions shall be capable of successful implementation and shall be consistent with the objective of the applicant to the greatest extent possible.

“(4)(A) If the holder of a permit issued under this subsection for other than scientific purposes is in compliance with the terms and conditions of the permit, and any conservation plan or agreement incorporated by reference therein, the Secretary may not require the holder, without the consent of the holder, to adopt any new minimization, mitigation, or other measure with respect to any species adequately covered by the permit during the term of the permit, except as provided in subparagraphs (B) and (C) to meet circumstances that have changed subsequent to the issuance of the permit.

“(B) For any circumstance identified in the permit or incorporated document that has changed, the Secretary may, in the absence of consent of the permit holder, require only such additional minimization, mitigation, or other measures as are already provided in the permit or incorporated document for such changed circumstance.

“(C) For any changed circumstance not identified in the permit or incorporated document, the Secretary may, in the absence of consent of the permit holder, require only such additional minimization, mitigation, or other measures to address such changed circumstance that do not involve the commitment of any additional land, water, or financial compensation not otherwise committed, or the imposition of additional restrictions on the use of any land, water or other natural resources otherwise available for development or use, under the original terms and conditions of the permit or incorporated document.

“(D) The Secretary shall have the burden of proof in demonstrating and documenting, with the best available scientific data, the occurrence of any changed circumstances for purposes of this paragraph.

“(E) All permits issued under this subsection on or after the date of the enactment of the Threatened and Endangered Species Recovery Act of 2005, other than permits for scientific purposes, shall contain the assurances contained in subparagraphs (B) through (D) of this paragraph and paragraph (5)(A) and (B). Permits issued under this subsection on or after March 25, 1998, and before the date of the enactment of the Threatened and Endangered Species Recovery Act of 2005, other than permits for scientific purposes, shall be governed by the applicable sections of parts 17.22(b), (c), and (d), and

17.32(b), (c), and (d) of title 50, Code of Federal Regulations, as the same exist on the date of the enactment of the Threatened and Endangered Species Act of 2005.

“(5)(A) The Secretary shall revoke a permit issued under paragraph (2) if the Secretary finds that the permittee is not complying with the terms and conditions of the permit.

“(B) Any permit subject to paragraph (4)(A) may be revoked due to changed circumstances only if—

“(i) the Secretary determines that continuation of the activities to which the permit applies would be inconsistent with the criteria in paragraph (2)(B)(iv);

“(ii) the Secretary provides 60 days notice of revocation to the permittee; and

“(iii) the Secretary is unable to, and the permittee chooses not to, remedy the condition causing such inconsistency.”

(b) EXTENSION OF PERIOD FOR PUBLIC REVIEW AND COMMENT ON APPLICATIONS.—Section 10(c) (16 U.S.C. 1539(c)) is amended in the second sentence by striking “thirty” each place it appears and inserting “45”.

(c) EXPERIMENTAL POPULATIONS.—Section 10(j) (16 U.S.C. 1539(j)) is amended—

(1) in paragraph (1), by striking “For purposes” and all that follows through the end of the paragraph and inserting the following: “For purposes of this subsection, the term ‘experimental population’ means any population (including any offspring arising therefrom) authorized by the Secretary for release under paragraph (2), but only when such population is in the area designated for it by the Secretary, and such area is, at the time of release, wholly separate geographically from areas occupied by nonexperimental populations of the same species. For purposes of this subsection, the term ‘areas occupied by nonexperimental populations’ means areas characterized by the sustained and predictable presence of more than negligible numbers of successfully reproducing individuals over a period of many years.”;

(2) in paragraph (2)(B), by striking “information” and inserting “scientific data”; and

(3) in paragraph (2)(C)(i), by striking “listed” and inserting “determined to be an endangered species or a threatened species”.

(d) WRITTEN DETERMINATION OF COMPLIANCE.—Section 10 (16 U.S.C. 1539) is amended by adding at the end the following:

“(k) WRITTEN DETERMINATION OF COMPLIANCE.—(1) A property owner (in this subsection referred to as a ‘requester’) may request the Secretary to make a written determination that a proposed use of the owner’s property that is lawful under State and local law will comply with section 9(a), by submitting a written description of the proposed action to the Secretary by certified mail.

“(2) A written description of a proposed use is deemed to be sufficient for consideration by the Secretary under paragraph (1) if the description includes—

“(A) the nature, the specific location, the lawfulness under State and local law, and the anticipated schedule and duration of the proposed use, and a demonstration that the property owner has the means to undertake the proposed use; and

“(B) any anticipated adverse impact to a species that is included on a list published under 4(c)(1) that the requester reasonably expects to occur as a result of the proposed use.

“(3) The Secretary may request and the requester may supply any other information that either believes will assist the Secretary to make a determination under paragraph (1).

“(4) If the Secretary does not make a determination pursuant to a request under this subsection because of the omission from the request of any information described in para-

graph (2), the requester may submit a subsequent request under this subsection for the same proposed use.

“(5)(A) Subject to subparagraph (B), the Secretary shall provide to the requester a written determination of whether the proposed use, as proposed by the requester, will comply with section 9(a), by not later than expiration of the 180-day period beginning on the date of the submission of the request.

“(B) The Secretary may request, and the requester may grant, a written extension of the period under subparagraph (A).

“(6) If the Secretary fails to provide a written determination before the expiration of the period under paragraph (5)(A) (or any extension thereof under paragraph (5)(B)), the Secretary is deemed to have determined that the proposed use complies with section 9(a).

“(7) This subsection shall not apply with respect to agency actions that are subject to consultation under section 7.

“(8) Any use or action taken by the property owner in reasonable reliance on a written determination of compliance under paragraph (5) or on the application of paragraph (6) shall not be treated as a violation of section 9(a).

“(9) Any determination of compliance under this subsection shall remain effective—

“(A) in the case of a written determination provided under paragraph (5)(A), for the 10-year period beginning on the date the written determination is provided; or

“(B) in the case of a determination that under paragraph (6) the Secretary is deemed to have made, the 5-year period beginning on the first date the Secretary is deemed to have made the determination.

“(10) The Secretary may withdraw a determination of compliance under this section only if the Secretary determines that, because of unforeseen changed circumstances, the continuation of the use to which the determination applies would preclude conservation measures essential to the survival of any endangered species or threatened species. Such a withdrawal shall take effect 10 days after the date the Secretary provides notice of the withdrawal to the requester.

“(11) The Secretary may extend the period that applies under paragraph (5) by up to 180 days if seasonal considerations make a determination impossible within the period that would otherwise apply.”

(e) NATIONAL SECURITY EXEMPTION.—Section 10 (16 U.S.C. 1539) is further amended by adding at the end the following:

“(1) NATIONAL SECURITY.—The President, after consultation with the appropriate Federal agency, may exempt any act or omission from the provisions of this Act if such exemption is necessary for national security.”

(f) DISASTER DECLARATION AND PROTECTION.—Section 10 (16 U.S.C. 1539) is further amended by adding at the end the following:

“(m) DISASTER DECLARATION AND PROTECTION.—(1) The President may suspend the application of any provision of this Act in any area for which a major disaster is declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

“(2) The Secretary shall, within one year after the date of the enactment of the Threatened and Endangered Species Recovery Act of 2005, promulgate regulations regarding application of this Act in the event of an emergency (including circumstances other than a major disaster referred to in paragraph (1)) involving a threat to human health or safety or to property, including regulations—

“(A) determining what constitutes an emergency for purposes of this paragraph; and

“(B) to address immediate threats through expedited consideration under or waiver of any provision of this Act.”

**SEC. 13. PRIVATE PROPERTY CONSERVATION.**

Section 13 (consisting of amendments to other laws, which have executed) is amended to read as follows:

**“PRIVATE PROPERTY CONSERVATION**

“SEC. 13. (a) IN GENERAL.—The Secretary may provide conservation grants (in this section referred to as ‘grants’) to promote the voluntary conservation of endangered species and threatened species by owners of private property and shall provide financial conservation aid (in this section referred to as ‘aid’) to alleviate the burden of conservation measures imposed upon private property owners by this Act. The Secretary may provide technical assistance when requested to enhance the conservation effects of grants or aid.

“(b) AWARDING OF GRANTS AND AID.—Grants to promote conservation of endangered species and threatened species on private property—

“(1) may not be used to fund litigation, general education, general outreach, lobbying, or solicitation;

“(2) may not be used to acquire leases or easements of more than 50 years duration or fee title to private property;

“(3) must be designed to directly contribute to the conservation of an endangered species or threatened species by increasing the species’ numbers or distribution; and

“(4) must be supported by any private property owners on whose property any grant funded activities are carried out.

“(c) PRIORITY.—Priority shall be accorded among grant requests in the following order:

“(1) Grants that promote conservation of endangered species or threatened species on private property while making economically beneficial and productive use of the private property on which the conservation activities are conducted.

“(2) Grants that develop, promote, or use techniques to increase the distribution or population of an endangered species or threatened species on private property.

“(3) Other grants that promote voluntary conservation of endangered species or threatened species on private property.

“(d) ELIGIBILITY FOR AID.—(1) The Secretary shall award aid to private property owners who—

“(A) received a written determination under section 10(k) finding that the proposed use of private property would not comply with section 9(a); or

“(B) receive notice under section 10(k)(10) that a written determination has been withdrawn.

“(2) Aid shall be in an amount no less than the fair market value of the use that was proposed by the property owner if—

“(A) the owner has foregone the proposed use;

“(B) the owner has requested financial aid—

“(i) within 180 days of the Secretary’s issuance of a written determination that the proposed use would not comply with section 9(a); or

“(ii) within 180 days after the property owner is notified of a withdrawal under section 10(k)(10); and

“(C) the foregone use would be lawful under State and local law and the property owner has demonstrated that the property owner has the means to undertake the proposed use.

“(e) DISTRIBUTION OF GRANTS AND AID.—(1) The Secretary shall pay eligible aid—

“(A) within 180 days after receipt of a request for aid unless there are unresolved questions regarding the documentation of the foregone proposed use or unresolved questions regarding the fair market value; or

“(B) at the resolution of any questions concerning the documentation of the fore-

gone use established under subsection (f) or the fair market value established under subsection (g).

“(2) All grants provided under this section shall be paid on the last day of the fiscal year. Aid shall be paid based on the date of the initial request.

“(f) DOCUMENTATION OF THE FOREGONE USE.—Within 30 days of the request for aid, the Secretary shall enter into negotiations with the property owner regarding the documentation of the foregone proposed use through such mechanisms such as contract terms, lease terms, deed restrictions, easement terms, or transfer of title. If the Secretary and the property owner are unable to reach an agreement, then, within 60 days of the request for aid, the Secretary shall determine how the property owner’s foregone use shall be documented with the least impact on the ownership interests of the property owner necessary to document the foregone use.

“(g) FAIR MARKET VALUE.—For purposes of this section, the fair market value of the foregone use of the affected portion of the private property, including business losses, is what a willing buyer would pay to a willing seller in an open market. Fair market value shall take into account the likelihood that the foregone use would be approved under State and local law. The fair market value shall be determined within 180 days of the documentation of the foregone use. The fair market value shall be determined jointly by 2 licensed independent appraisers, one selected by the Secretary and one selected by the property owner. If the 2 appraisers fail to agree on fair market value, the Secretary and the property owner shall jointly select a third licensed appraiser whose appraisal within an additional 90 days shall be binding on the Secretary and the private property owner. Within one year after the date of enactment of the Threatened and Endangered Species Recovery Act of 2005, the Secretary shall promulgate regulations regarding selection of the jointly selected appraisers under this subsection.

“(h) LIMITATION ON AID AVAILABILITY.—Any person receiving aid under this section may not receive additional aid under this section for the same foregone use of the same property and for the same period of time.

“(i) ANNUAL REPORTING.—The Secretary shall by January 15 of each year provide a report of all aid and grants awarded under this section to the Committee on Resources of the House of Representatives and the Environment and Public Works Committee of the Senate and make such report electronically available to the general public on the website required under section 14.”

**SEC. 14. PUBLIC ACCESSIBILITY AND ACCOUNTABILITY.**

Section 14 (relating to repeals of other laws, which have executed) is amended to read as follows:

**“PUBLIC ACCESSIBILITY AND ACCOUNTABILITY**

“SEC. 14. The Secretary shall make available on a publicly accessible website on the Internet—

“(1) each list published under section 4(c)(1);

“(2) all final and proposed regulations and determinations under section 4;

“(3) the results of all 5-year reviews conducted under section 4(c)(2)(A);

“(4) all draft and final recovery plans issued under section 5(a), and all final recovery plans issued and in effect under section 4(f)(1) of this Act as in effect immediately before the enactment of the Threatened and Endangered Species Recovery Act of 2005;

“(5) all reports required under sections 5(e) and 16, and all reports required under sec-

tions 4(f)(3) and 18 of this Act as in effect immediately before the enactment of the Threatened and Endangered Species Recovery Act of 2005; and

“(6) data contained in the reports referred to in paragraph (5) of this section, and that were produced after the date of enactment of the Threatened and Endangered Species Recovery Act of 2005, in the form of databases that may be searched by the variables included in the reports.”

**SEC. 15. ANNUAL COST ANALYSES.**

(a) ANNUAL COST ANALYSES.—Section 18 (16 U.S.C. 1544) is amended to read as follows:

**“ANNUAL COST ANALYSIS BY UNITED STATES FISH AND WILDLIFE SERVICE**

“SEC. 18. (a) IN GENERAL.—On or before January 15 of each year, the Secretary shall submit to the Congress an annual report covering the preceding fiscal year that contains an accounting of all reasonably identifiable expenditures made primarily for the conservation of species included on lists published and in effect under section 4(c).

“(b) SPECIFICATION OF EXPENDITURES.—Each report under this section shall specify—

“(1) expenditures of Federal funds on a species-by-species basis, and expenditures of Federal funds that are not attributable to a specific species;

“(2) expenditures by States for the fiscal year covered by the report on a species-by-species basis, and expenditures by States that are not attributable to a specific species; and

“(3) based on data submitted pursuant to subsection (c), expenditures voluntarily reported by local governmental entities on a species-by-species basis, and such expenditures that are not attributable to a specific species.

“(c) ENCOURAGEMENT OF VOLUNTARY SUBMISSION OF DATA BY LOCAL GOVERNMENTS.—The Secretary shall provide a means by which local governmental entities may—

“(1) voluntarily submit electronic data regarding their expenditures for conservation of species listed under section 4(c); and

“(2) attest to the accuracy of such data.”

(b) ELIGIBILITY OF STATES FOR FINANCIAL ASSISTANCE.—Section 6(d) (16 U.S.C. 1535(d)) is amended by adding at the end the following:

“(3) A State shall not be eligible for financial assistance under this section for a fiscal year unless the State has provided to the Secretary for the preceding fiscal year information regarding the expenditures referred to in section 16(b)(2).”

**SEC. 16. REIMBURSEMENT FOR DEPREDAATION OF LIVESTOCK BY REINTRODUCED SPECIES.**

The Endangered Species Act of 1973 is further amended—

(1) by striking sections 15 and 16;

(2) by redesignating sections 17 and 18 as sections 15 and 16, respectively; and

(3) by adding after section 16, as so redesignated, the following:

**“REIMBURSEMENT FOR DEPREDAATION OF LIVESTOCK BY REINTRODUCED SPECIES**

“SEC. 17. (a) IN GENERAL.—The Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, may reimburse the owner of livestock for any loss of livestock resulting from depredation by any population of a species if the population is listed under section 4(c) and includes or derives from members of the species that were reintroduced into the wild.

“(b) ELIGIBILITY FOR AND AMOUNT.—Eligibility for, and the amount of, reimbursement under this section shall not be conditioned on the presentation of the body of any animal for which reimbursement is sought.



“(c) LIMITATION ON REQUIREMENT TO PRESENT BODY.—The Secretary may not require the owner of livestock to present the body of individual livestock as a condition of payment of reimbursement under this section.

“(d) USE OF DONATIONS.—The Secretary may accept and use donations of funds to pay reimbursement under this section.

“(e) AVAILABILITY OF APPROPRIATIONS.—The requirement to pay reimbursement under this section is subject to the availability of funds for such payments.”.

#### SEC. 17. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—The Endangered Species Act of 1973 is further amended by adding at the end the following:

##### “AUTHORIZATION OF APPROPRIATIONS

“SEC. 18. (a) IN GENERAL.—There are authorized to be appropriated to carry out this Act, other than section 8A(e)—

“(1) to the Secretary of the Interior to carry out functions and responsibilities of the Department of the Interior under this Act, such sums as are necessary for fiscal years 2006 through 2010; and

“(2) to the Secretary of Agriculture to carry out functions and responsibilities of the Department of the Interior with respect to the enforcement of this Act and the convention which pertain the importation of plants, such sums as are necessary for fiscal year 2006 through 2010.

“(b) CONVENTION IMPLEMENTATION.—There is authorized to be appropriated to the Secretary of the Interior to carry out section 8A(e) such sums as are necessary for fiscal years 2006 through 2010.”.

(b) CONFORMING AMENDMENT.—Section 8(a) (16 U.S.C. 1537(a)) is amended by striking “section 15” and inserting “section 18”.

#### SEC. 18. MISCELLANEOUS TECHNICAL CORRECTIONS.

(a) INTERNATIONAL COOPERATION.—Section 8 (16 U.S.C. 1537) is amended—

(1) in subsection (a) in the first sentence by striking “any endangered species or threatened species listed” and inserting “any species determined to be an endangered species or a threatened species”; and

(2) in subsection (b) in paragraph (1), by striking “endangered species and threatened species listed” and inserting “species determined to be endangered species and threatened species”.

(b) MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.—Section 8A (16 U.S.C. 1537a) is amended—

(1) in subsection (a), by striking “of the Interior (hereinafter in this section referred to as the ‘Secretary’)”;

(2) in subsection (d), by striking “Merchant Marine and Fisheries” and inserting “Resources”; and

(3) in subsection (e)—

(A) in paragraph (1), by striking “of the Interior (hereinafter in this subsection referred to as the ‘Secretary’)”; and

(B) by striking paragraph (3) and redesignating paragraph (4) as paragraph (3).

(c) PROHIBITED ACTS.—Section 9 (16 U.S.C. 1538) is amended—

(1) in subsection (a)—

(A) in paragraph (1), in the matter preceding subparagraph (A), by striking “of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act” and inserting “, with respect to any species of fish or wildlife determined to be an endangered species under section 4”;

(B) in paragraph (1)(G), by striking “threatened species of fish or wildlife listed pursuant to section 4 of this Act” and inserting “species of fish or wildlife determined to be a threatened species under section 4”;

(C) in paragraph (2), in the matter preceding subparagraph (A) by striking “of this

Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act” and inserting “, with respect to any species of plants determined to be an endangered species under section 4”;

(D) in paragraph (2)(E), by striking “listed pursuant to section 4 of this Act” and inserting “determined to be a threatened species under section 4”;

(2) in subsection (b)—

(A) by striking “(1)” before “SPECIES” and inserting “(1)” before the first sentence;

(B) in paragraph (1), in the first sentence, by striking “adding such” and all that follows through “; Provided, That” and inserting “determining such fish or wildlife species to be an endangered species or a threatened species under section 4, if”;

(C) in paragraph (1), in the second sentence, by striking “adding such” and all that follows through “this Act” and inserting “determining such fish or wildlife species to be an endangered species or a threatened species under section 4”;

(3) in subsection (c)(2)(A), by striking “an endangered species listed” and inserting “a species determined to be an endangered species”;

(4) in subsection (d)(1)(A), by striking clause (i) and inserting the following: “(i) are not determined to be endangered species or threatened species under section 4, and”;

(5) in subsection (e), by striking clause (1) and inserting the following: “(1) are not determined to be endangered species or threatened species under section 4, and”;

(6) in subsection (f)—

(A) in paragraph (1), in the first sentence, by striking clause (A) and inserting the following: “(A) are not determined to be endangered species or threatened species under section 4, and”;

(B) by striking “Secretary of the Interior” each place it appears and inserting “Secretary”;

(d) HARDSHIP EXEMPTIONS.—Section 10(b) (16 U.S.C. 1539(b)) is amended—

(1) in paragraph (1)—

(A) by striking “an endangered species” and all that follows through “section 4 of this Act” and inserting “an endangered species or a threatened species and the subsequent determination that the species is an endangered species or a threatened species under section 4”;

(B) by striking “section 9(a) of this Act” and inserting “section 9(a)”;

(C) by striking “fish or wildlife listed by the Secretary as endangered” and inserting “fish or wildlife determined to be an endangered species or threatened species by the Secretary”;

(2) in paragraph (2)—

(A) by inserting “or a threatened species” after “endangered species” each place it appears; and

(B) in subparagraph (B), by striking “listed species” and inserting “endangered species or threatened species”.

(e) PERMIT AND EXEMPTION POLICY.—Section 10(d) (16 U.S.C. 1539(d)) is amended—

(1) by inserting “or threatened species” after “endangered species”;

(2) by striking “of this Act”.

(f) PRE-ACT PARTS AND SCRIMSHAW.—Section 10(f) (16 U.S.C. 1539(f)) is amended—

(1) by inserting after “(f)” the following: “PRE-ACT PARTS AND SCRIMSHAW.”; and

(2) in paragraph (2), by striking “of this Act” each place it appears.

(g) BURDEN OF PROOF IN SEEKING EXEMPTION OR PERMIT.—Section 10(g) (16 U.S.C. 1539(g)) is amended by inserting after “(g)” the following: “BURDEN OF PROOF IN SEEKING EXEMPTION OR PERMIT.”.

(h) ANTIQUE ARTICLES.—Section 10(h)(1)(B) (16 U.S.C. 1539(h)(1)(B)) is amended by striking “endangered species or threatened spe-

cies listed” and inserting “species determined to be an endangered species or a threatened species”.

(i) PENALTIES AND ENFORCEMENT.—Section 11 (16 U.S.C. 1540) is amended in subsection (e)(3), in the second sentence, by striking “Such persons” and inserting “Such a person”.

(j) SUBSTITUTION OF GENDER-NEUTRAL REFERENCES.—

(1) “SECRETARY” FOR “HE”.—The following provisions are amended by striking “he” each place it appears and inserting “the Secretary”:

(A) Paragraph (4)(C) of section 4(b), as redesignated by section 5(b)(2) of this Act.

(B) Paragraph (5)(B)(ii) of section 4(b), as redesignated by section 5(b)(2) of this Act.

(C) Section 4(b)(7) (16 U.S.C. 1533(b)(7)), in the matter following subparagraph (B).

(D) Section 6 (16 U.S.C. 1535).

(E) Section 8(d) (16 U.S.C. 1537(d)).

(F) Section 9(f) (16 U.S.C. 1538(f)).

(G) Section 10(a) (16 U.S.C. 1539(a)).

(H) Section 10(b)(3) (16 U.S.C. 1539(b)(3)).

(I) Section 10(d) (16 U.S.C. 1539(d)).

(J) Section 10(e)(4) (16 U.S.C. 1539(e)(4)).

(K) Section 10(f)(4), (5), and (8)(B) (16 U.S.C. 1539(f)(4), (5), (8)(B)).

(L) Section 11(e)(5) (16 U.S.C. 1540(e)(5)).

(2) “PRESIDENT” FOR “HE”.—Section 8(a) (16 U.S.C. 1537(a)) is amended in the second sentence by striking “he” and inserting “the President”.

(3) “SECRETARY OF THE INTERIOR” FOR “HE”.—Section 8(b)(3) (16 U.S.C. 1537(b)(3)) is amended by striking “he” and inserting “the Secretary of the Interior”.

(4) “PERSON” FOR “HE”.—The following provisions are amended by striking “he” each place it appears and inserting “the person”:

(A) Section 10(f)(3) (16 U.S.C. 1539(f)(3)).

(B) Section 11(e)(3) (16 U.S.C. 1540(e)(3)).

(5) “DEFENDANT” FOR “HE”.—The following provisions are amended by striking “he” each place it appears and inserting “the defendant”.

(A) Section 11(a)(3) (16 U.S.C. 1540(a)(3)).

(B) Section 11(b)(3) (16 U.S.C. 1540(b)(3)).

(6) REFERENCES TO “HIM”.—

(A) Section 4(c)(1) (16 U.S.C. 1533(c)(1)) is amended by striking “him or the Secretary of Commerce” each place it appears and inserting “the Secretary”.

(B) Paragraph (6) of section 4(b) (16 U.S.C. 1533(b)), as redesignated by section 5(b)(2) of this Act, is further amended in the matter following subparagraph (B) by striking “him” and inserting “the Secretary”.

(C) Section 5(k)(2), as redesignated by section 9(a)(1) of this Act, is amended by striking “him” and inserting “the Secretary”.

(D) Section 7(a)(1) (16 U.S.C. 1536(a)(1)) is amended in the first sentence by striking “him” and inserting “the Secretary”.

(E) Section 8A(c)(2) (16 U.S.C. 1537a(c)(2)) is amended by striking “him” and inserting “the Secretary”.

(F) Section 9(d)(2)(A) (16 U.S.C. 1538(d)(2)(A)) is amended by striking “him” each place it appears and inserting “such person”.

(G) Section 10(b)(1) (16 U.S.C. 1539(b)(1)) is amended by striking “him” and inserting “the Secretary”.

(7) REFERENCES TO “HIMSELF OR HERSELF”.—Section 11 (16 U.S.C. 1540) is amended in subsections (a)(3) and (b)(3) by striking “himself or herself” each place it appears and inserting “the defendant”.

(8) REFERENCES TO “HIS”.—

(A) Section 4(g)(1), as redesignated by section 8(1) of this Act, is amended by striking “his” and inserting “the”.

(B) Section 6 (16 U.S.C. 1535) is amended—

(i) in subsection (d)(2) in the matter following clause (ii) by striking “his” and inserting “the Secretary’s”; and

(ii) in subsection (e)(1), as designated by section 10(3)(A) of this Act, by striking “his periodic review” and inserting “periodic review by the Secretary”.

(C) Section 7(a)(3) (16 U.S.C. 1536(a)(3)) is amended by striking “his” and inserting “the applicant’s”.

(D) Section 8(c)(1) (16 U.S.C. 1537(c)(1)) is amended by striking “his” and inserting “the Secretary’s”.

(E) Section 9 (16 U.S.C. 1538) is amended in subsection (d)(2)(B) and subsection (f) by striking “his” each place it appears and inserting “such person’s”.

(F) Section 10(b)(3) (16 U.S.C. 1539(b)(3)) is amended by striking “his” and inserting “the Secretary’s”.

(G) Section 10(d) (16 U.S.C. 1539(d)) is amended by striking “his” and inserting “the”.

(H) Section 11 (16 U.S.C. 1540) is amended—  
(i) in subsection (a)(1) by striking “his” and inserting “the Secretary’s”;

(ii) in subsections (a)(3) and (b)(3) by striking “his or her” each place it appears and inserting “the defendant’s”;

(iii) in subsection (d) by striking “his” and inserting “the officer’s or employee’s”;

(iv) in subsection (e)(3) in the second sentence by striking “his” and inserting “the person’s”; and

(v) in subsection (g)(1) by striking “his” and inserting “the person’s”.

#### **SEC. 19. CLERICAL AMENDMENT TO TABLE OF CONTENTS.**

The table of contents in the first section is amended—

(1) by striking the item relating to section 5 and inserting the following:

“Sec. 5. Recovery plans and land acquisition.”

; and

(2) by striking the items relating to sections 13 through 17 and inserting the following:

“Sec. 13. Private property conservation.

“Sec. 14. Public accessibility and accountability.

“Sec. 15. Marine Mammal Protection Act of 1972.

“Sec. 16. Annual cost analysis by United States Fish and Wildlife Service.

“Sec. 17. Reimbursement for depredation of livestock by reintroduced species.

“Sec. 18. Authorization of appropriations.”

#### **SEC. 20. CERTAIN ACTIONS DEEMED IN COMPLIANCE.**

(a) ACTIONS DEEMED IN COMPLIANCE.—During the period beginning on the date of the

enactment of this Act and ending on the date described in subsection (b), any action that is taken by a Federal agency, State agency, or other person and that complies with the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) is deemed to comply with sections 7(a)(2) and 9(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)(2), 1538(a)(1)(B)) (as amended by this Act) and regulations issued under section 4(d) of such Act (16 U.S.C. 1533(d)).

(b) TERMINATION DATE.—The date referred to in subsection (a) is the earlier of—

(1) the date that is 5 years after the date of the enactment of this Act; and

(2) the date of the completion of any procedure required under subpart D of part 402 of title 50, Code of Federal Regulations, with respect to the action referred to in subsection (a).

(c) LIMITATION ON APPLICATION.—This section shall not affect any procedure pursuant to part 402 of title 50, Code of Federal Regulations, that is required by any court order issued before the date of the enactment of this Act.